

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Ralf Prenzel et al.
Serial No.:	10/511,056
Date Filed:	October 11, 2004
Group Art Unit:	2618
Confirmation No.:	6152
Examiner:	Safaipour, Bobbak
Title:	METHOD FOR TRANSMITTING DATA, PARTICULARLY HAVING MULTIMEDIA CONTENTS, IN A MOBILE RADIO TELEPHONE NETWORK

MAIL STOP – APPEAL BRIEF - PATENTS

Commissioner for Patents
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REPLY BRIEF

Appellants have appealed to this Board from the final rejection of Claims 31-38 dated February 12, 2009, and Notice of Panel Decision from Pre-Appeal Brief Review dated August 7, 2009. Appellants filed a Notice of Appeal on July 30, 2009, and filed an Appeal Brief on December 18, 2009, (the “*Appeal Brief*”). The Examiner responded in an Examiner’s Answer mailed January 20, 2010, (the “*Examiner’s Answer*”). Appellants respectfully submit this Reply Brief.

In the *Examiner’s Answer*, the Examiner sustained the final rejection.

I. REAL PARTY IN INTEREST

This application is currently owned by Siemens Aktiengesellschaft as indicated by an assignment recorded on October 11, 2004, in the Assignment Records of the United States Patent and Trademark Office at Reel 016485, Frame 0394.

II. RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision regarding this appeal.

III. STATUS OF CLAIMS

Claims 31-38 are pending in this application and all stand rejected under a Final Office Action mailed February 12, 2009. Claims 1-30 were previously cancelled without prejudice or disclaimer. Appellants present Claims 31-38 for appeal. Appendix A shows all pending claims.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 31 recites a method for transmitting data having multimedia content from a first communications unit (reference 10 in figure 1 and spec at page 12, line 10; reference 110 in figure 2 and spec at page 13, line 12) to a second communications unit (reference 40 in figure 1 and spec at page 12, line 22; reference 114 in figure 2 and spec at page 13, line 16) in a telecommunications network (spec at page 12, line 10 and page 13, line 8) the method comprising: transmitting at least one transmission status message (figures 3 and 4) assigned to the data to the first communications unit; wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second

communications unit and that the data could have been delivered, but were not received by the second communications unit (spec at page 15 line 1 through page 16, line 18).

Independent claim 38 recites a switching arrangement for transmitting data in a telecommunications network (spec at page 12, line 10 and page 13, line 22) from a first communications unit (reference 10 in figure 1 and spec at page 12, line 10; reference 110 in figure 2 and spec at page 13, line 8) to a second communications unit (reference 40 in figure 1 and spec at page 12, line 10; reference 114 in figure 2 and spec at page 13, line 8), comprising an apparatus (reference 110 and spec at page 13, line 8) for producing a transmission status message (figures 3 and 4) which is assigned to the data to be transmitted to the second communications unit, the apparatus providing a signaling (spec at page 13, line 31), upon non-delivery of the data to the second communications unit, with the transmission status message to the first communications unit including a non-delivery reason which is selected between at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit (spec at page 15 line 1 through page 16, line 18).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 31-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over International Application No. WO 01/28171 A1 by Kalevi Ratschunas, et al. ("*Ratschunas*") in view of U.S. Patent No. 7,127,264 issued to Daniel Hronek, et al. ("*Hronek*").

VII. ARGUMENT

From the Examiner's Answer, it appears that the Examiner agrees that the application comprises allowable subject matter, and has only withheld allowance because

If the Applicant intends to differentiate between that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit, then such differences should be made explicit in the claims.

(Examiner's Answer at 11). However, the claims already explicitly recite the differences between that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

Claim 31 recites "wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit." (emphasis added). Claim 38 recites a similar feature.

The examiner argues that

one of ordinary skill in the art can correctly argue that the two non-delivery reasons are broad that a specific non-delivery reason can be read on either condition. Taking one of the examples given in the Hronek reference, if the intended user was out of the service area, this non-delivery reason could be read on either of the two non-delivery reason of the claim language, (1) the data could not be delivered to the second communications unit and (2) if the intended user out of the service area, the data could have been delivered, but the data were not received by the second communications unit due to the fact the intended user was out of the service area.

(Examiner's Answer at 11). However, as noted above, the claims expressly recite two non-delivery reasons, only one of which applies when the intended user is out of the service area.

NON-DELIVERY REASON NO. 1 - "the data could not be delivered to the second communications unit"

NON-DELIVERY REASON NO. 2 - "the data could have been delivered, but were not received by the second communications unit."

(Claim 31). The examiner's argument simply improperly applies a hypothetical situation to the claim language. If "the intended user [is] out of the service area," then only non-delivery

reason No. 1 would apply, i.e., “the data could not be delivered to the second communications unit”. Non-delivery reason No. 2 would not apply in the case of “the intended user being out of the service area” because “the data could have been delivered.”

The examiner improperly reduces the clear claim language to the simplified limitation that the non-delivery reason is selected from “at least two non-delivery reasons” without any further qualification of the nature of the non-delivery reason (in spite of the clear language of the claims). The examiner admits that “Ratschunas fails to specifically disclose that the non-deliver reason is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.” (Examiner’s Answer at 9). Hronek is therefore cited as disclosing,

The MSC 603 delivers the short message to the intended subscriber 604, and sends a delivery report 612 to the SMSC 601. The SMSC 601 may send the result of the delivery, I.E., the status report 613 (read as a transmission status message)).

(Examiner’s Answer at 10) (emphasis in original). However, Hronek does not disclose that the status report 613 provides any information about a non-delivery reason. Hronek merely teaches that a single “failure” message is sent no matter what the reason for the delivery failure.

When the attempted delivery of the short message has failed because, for instance, the intended user was out of the service area, or had his or her communication device turned off, *the MSC 603 informs the HLR 602 of the failure*. The HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.

(Hronek at 3:43-49) (emphasis added). Hronek merely “informs the HLR of the failure,” without providing any information as to the reason for the delivery failure. This fact is confirmed by Hronek’s teaching that the HLR do only one action in response to being informed of the failure. Specifically, Hronek teaches that “HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.” Hronek does not teach or suggest deciding between sending the message again or discarding the message because the HLR has not receive sufficiently

detailed information from the delivery failure message to inform such a decision. Thus, Hronek fails to teach or suggest “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons.*” The invention as claimed in claims 31 and 38 is patentable in view of the combined teachings of Ratschunas and Hronek. The invention as claimed in the dependent claims is patentable for similar reasons.

SUMMARY

Appellants believe there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Appellants' attorney at 512.457.2026.

Respectfully submitted,
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APPENDIX A - CLAIMS INVOLVED IN APPEAL

1-30. (Cancelled)

31. (Previously Presented) A method for transmitting data having multimedia content from a first communications unit to a second communications unit in a telecommunications network, the method comprising:

transmitting at least one transmission status message assigned to the data to the first communications unit;

wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

32. (Previously Presented) The method as claimed in claim 31, wherein the data could not be delivered due to an incorrect address of the second communications unit or because the second communications unit was not available within a period of validity of the data.

33. (Previously Presented) The method as claimed in claim 31, wherein the data were not received because they were intentionally not downloaded to the second communications unit.

34. (Previously Presented) The method as claimed in claim 31, wherein the signaling comprises providing an item of information concerning the non-deliverability of the data in the transmission status message.

35. (Previously Presented) The method as claimed in claim 31, wherein the non-deliverability of the data applies if one of the correct receipt of the data and of a recipient notification message concerning the data to be transmitted to the second communications unit is not acknowledged by the second communications unit via a respectively associated confirmation message.

36. (Previously Presented) The method as claimed in claim 31, wherein the telecommunications network includes a switching arrangement via which the data is transmitted from the first communications unit to the second communications unit, and wherein the switching arrangement establishes the information and signals the information with the transmission status message to the first communications unit.

37. (Previously Presented) The method as claimed in claim 31, wherein the data is transmitted via a Multimedia Messaging Service using a Wireless Application Protocol.

38. (Previously Presented) A switching arrangement for transmitting data in a telecommunications network from a first communications unit to a second communications unit, comprising an apparatus for producing a transmission status message which is assigned to the data to be transmitted to the second communications unit,

the apparatus providing a signaling, upon non-delivery of the data to the second communications unit, with the transmission status message to the first communications unit including a non-delivery reason which is selected between at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

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APPENDIX B - EVIDENCE

NONE

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APPENDIX C: RELATED PROCEEDINGS

NONE